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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-12-0001

RIN 0563-AC37

Common Crop Insurance Regulations; Processing Sweet Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Processing Sweet Corn Crop Insurance Provisions. The intended effect of this action is to provide policy changes that better meet the needs of insured producers. The changes will be effective for the 2014 and succeeding crop years.

DATES: This rule is effective [insert date 30 days after this rule is published in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Stop 0812, Room 421, Kansas City, MO, 64141-6205, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order

13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss.

Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457), Processing Sweet Corn Crop Insurance Provisions that were published by FCIC on May 11, 2012, as a notice of proposed rulemaking in the Federal Register at 77 FR 27658–27659. The public was afforded 30 days to submit comments after the regulation was published in the Federal Register.

FCIC received a total of 22 comments from 4 commenters. The commenters were

insurance providers, an insurance services organization, and a Regional Office of the Risk Management Agency (RMA). The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

Order of priority statement

Comment: Commenters recommended deleting the order of priority statement, as the order of priority is contained in the Common Crop Insurance Policy, Basic Provisions and the order of priority statement has been removed from other recently updated policies.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. No change has been made to the final rule.

Section 1--Definitions

Comment: Commenters recommended eliminating unnecessary repetition of language contained in the definition of "practical to replant".

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Comment: Commenters stated that the proposed change to the "price election" definition makes no distinction between the "base contract price" and the "price election". Commenters further stated that the proposed definition could be read to mean that the producer must insure at 100 percent of the base contract price and cannot choose a lesser percentage. Commenters recommended adding language to the proposed

definition to clarify that a producer may elect to insure a percentage of the base contract price.

Response: FCIC considered this change but has determined that a revision to section 3 of the policy is more appropriate to address the issue raised by the commenters because this is more than a definitional change because it concerns an obligation of the policyholder to make the selection. No change has been made to the definition of “price election”.

Comment: One commenter recommended that FCIC add language to the definition of “price election” stating the definition of “price election” may be otherwise defined by FCIC in the Special Provisions.

Response: FCIC disagrees with the proposed change. In accordance with the order of priority contained in the Common Crop Insurance Policy, Basic Provisions, FCIC has the authority to provide the definition of “price election” in the Special Provisions, in lieu of the definition in the Basic Provisions. Therefore, no change has been made to the final rule.

Comment: Commenters recommended that FCIC clarify the definition of “processor contract” regarding different base contract prices on multiple contracts with the same processor that specify amounts of production.

Response: FCIC agrees with the suggested change and recognizes that it addresses a conflict created by FCIC’s proposed revision to the definition of “price election”. FCIC has revised the definition to clarify how multiple contracts are handled under the policy.

Section 2--Unit Division

Comment: Commenters recommended that FCIC clarify policy provisions regarding

the availability of unit structures under sections 2(a) and 2(b).

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 3--Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: Commenters recommended that FCIC adjust the provision in 3(a) that limits the producer to selecting only one price election for all the processing sweet corn in the county to be consistent with the definition of “price election” proposed by FCIC. Commenters stated that the provision should instead limit the producer to selecting only one percentage of the price election for all the processing sweet corn in the county.

Response: FCIC agrees with the suggested change and recognizes that it addresses a conflict created by FCIC’s proposed revision to the definition of “price election”. FCIC has revised the provision accordingly.

Comment: One commenter recommended that FCIC review 3(b) in relation to the Dry Bean Crop Provisions to determine if similar language is appropriate for processing sweet corn.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision because the provision is question is specific to dry beans and is not applicable here. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 6--Report of Acreage

Comment: One commenter recommended that FCIC revise section 6 to require the producer to report the base contract price on the acreage report.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 11--Duties in the Event of Damage or Loss

Comment: Commenters recommended that FCIC clarify terminology in 11(c).

Response: Without more information FCIC is unable to determine what needs clarification. Further, no changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision, and any such change could be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 12--Settlement of Claim

Comment: Commenters recommended that FCIC revise instructions and examples for settling claims due to the proposed change to the “price election” definition.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment. No change has been made to the final rule.

Section 14--Prevented Planting

Comment: Commenters recommended eliminating the increased prevented planting

coverage options for sweet corn.

Response: No changes were proposed to this provision and the proposed change does not address a conflict or vulnerability in the provision. Further, such a change would be substantive in nature and the public has not been provided an opportunity to comment.

No change has been made to the final rule.

List of Subjects in 7 CFR Part 457

Crop insurance, Processing sweet corn policy, Price elections.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 effective for the 2014 and succeeding crop years as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR Part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.154 as follows:

a. Amend the introductory text by removing “1998” and adding “2014” in its place;

b. Amend section 1 by adding a definition for “price election” in alphabetical order and revising the definition of “processor contract”;

c. Amend section 3 by revising paragraph (a).

The revised and added text reads as follows:

§ 457.154 Processing Sweet Corn crop insurance provisions.

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1. Definitions.

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Price election. In lieu of the definition of price election in the Basic Provisions, the price election will be the base contract price stated in your processor contract.

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Processor contract. A written agreement between the producer and a processor, containing at minimum:

- (a) The producer's commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;
- (b) The processor's commitment to purchase all the production stated in the processor contract; and
- (c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract, unless the contracts are for different types. Your base contract price will be the weighted average of all applicable base contract prices.

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3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

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(a) You may select only one price election percentage for all the processing sweet corn in the county insured under this policy. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy.

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Signed in Washington, D.C., on August 29, 2013.

Brandon Willis
Manager
Federal Crop Insurance Corporation

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